

# **JUVENILE COURT DEPARTMENT**

## **Guidelines for Court Investigator Reports**

01/25/02

### **I. INVESTIGATOR'S REPORT: PURPOSE AND USE**

In a care and protection proceeding, a judge is assisted by having as much relevant information available as possible. One important source of information is the report of the court investigator, because it provides the court with useful information that otherwise may not be presented by any of the parties in the proceedings. *See Custody of Tracy*, 31 Mass. App. Ct. 481, 485, 579 N.E.2d 1362 (1991). Armed with this information, a judge is better able to undertake the challenging task of deciding the outcome of a care and protection case.

By statute, the investigator is required to “make a report to the court under oath of an investigation into conditions affecting the child.” G. L. c. 119, § 24 (West 2001). The investigator’s report should contain all the facts obtained as a result of the investigation. *See* G. L. c. 119, § 21 (West 2001). Additionally, the report should be limited to factual information collected from identified sources. *See Tracy*, 31 Mass. App. Ct. at 484. Investigators should avoid reproducing clinical reports. The better practice is to extract pertinent quotes and present the facts.

Furthermore, G. L. c. 119, § 21 provides an exception to the hearsay rule for court investigator reports. *See* G. L. c. 119, § 21. Therefore, although a court investigator’s report may contain hearsay, it is admissible evidence. *See id.*; *see also* Section IV. Hearsay *infra* at page 9. The investigator, however, must clearly indicate the source of any information contained therein. *See Duro v. Duro*, 392 Mass. 574, 579-580, 467 N.E.2d 165, 169-170 (1984); *Custody of Two Minors*, 19 Mass. App. Ct. 552, 559, 476 N.E.2d 165, 169-170 (1985).

Once submitted to the court the court investigator’s report is considered evidence, subject to cross-examination and motions in limine, and is available for inspection by all counsel. *See* G. L. c. 119, § 21, 24; *see also Tracy*, 31 Mass. App. Ct. at 486.

There is no duty on any party to specifically introduce the investigator’s report into evidence. *See* G. L. c. 119, s. 21; *see also Custody of Two Minors*, 19 Mass. App. Ct. 552, 559, 476 N.E.2d 235, 240 (1985). If the report is not offered by any party, the judge may still rely on it in reaching a decision. *Id.* The judge, however, should inform the parties of his/her intention to do so in a timely manner in order to permit counsel to make an informed decision as to whether to call the investigator to the stand. *See Custody of Two Minors*, 19 Mass. App. Ct. at 559. Once the report is before the court for its consideration, the court is free to give it such weight as deemed appropriate. *Id.* When reviewing the report’s contents and supporting testimony, the court, however, will not “rubber-stamp” or incorporate the court investigator’s report wholesale, including the conclusions, into his/her findings. *Id.* Rather, the judge must reach an independent conclusion based upon the facts presented and must support this conclusion with specific findings if the report is to be used as a basis for depriving parents of

custody. *Id.*; see also *Petition of the Dept. of Public Welfare to Dispense with Consent to Adoption*, 383 Mass. 573, 593, 421 N.E.2d 28, 39 (1981). This duty to reach an independent assessment of the facts also applies in cases where the parties stipulate to the admission of the investigator's report as the only evidence to be presented.

Because of the importance of the court investigator's report, these guidelines were created to assist the court investigator with his/her statutory task. The guidelines will:

- address basic elements that all court investigators' reports should contain;
- suggest sources the investigator should use to obtain the facts to be included in the report;
- discuss the use of hearsay in the report;
- discuss the propriety of addenda to the report;
- comment on how to best organize the contents of the report; and
- provide suggestions as to the "Summary" and/or "Recommendation" sections.

## II. BASIC ELEMENTS

The following list provides general guidelines for the overall format of the court investigator's report.

### 1. The report should be thorough, professional, and contain accurate information.

- The report should provide current information and relevant history rather than merely relying upon or incorporating prior existing reports.
- The report should reflect a balanced picture of the family. All sides of the family should be investigated and the description of the family members should appear three-dimensional.
- The report should utilize multiple sources. The importance of contacting all known collaterals cannot be overemphasized.
- The information contained in the report should be as factual as possible. Opinions and conclusions of the investigator should be limited to the summary and recommendation sections of the report.

Ex: If the DSS worker informs the court investigator that a physician provided information to the worker, the court investigator not only should include the Department worker's statement, but also should

contact the physician to verify the information from its primary source.

- The report should have a professional appearance. It should not contain spelling or grammatical errors and the report should be paginated.
- The report should explain and discuss medical, psychiatric and social conditions in language understandable to the average layperson.
- The report should state the child(ren)'s needs in detail.

## **2. The report should not be biased.**

- The family should not be described in derogatory or judgmental terms.
- All family members should be approached with an attitude of respect and openness to hear their versions of the story regardless of the allegations.
- Avoid incorporating statements from sources that contain negative data in judgmental terms:

Ex: A statement describing father as "a well known drunk."

Ask the source to describe the judgmental statement in an alternative, factual manner:

Ex: "I saw father yesterday on the street; he was unable to stand and was slurring his words."

- Exclude any biases toward DSS as a whole, any specific area office, or social worker. The purpose of the investigation is to provide the court with information pertaining to the specific child(ren) and family before the court; but that information should include facts regarding the actions or inactions of the Department.
- Seek out sources with differing viewpoints.
- Consult any sources offered by the parents.
- When writing the report, give a balanced presentation that includes parent(s)' strengths and weaknesses, and any information that is factual, but which may not support your conclusions.

## **3. Reported information should be descriptive not evaluative.**

- Example of improper evaluative statement: "The apartment was filthy."
- Example of proper descriptive statement: "The kitchen sink was filled with dishes covered with dried food and there were dozens of flies and roaches in the

apartment.”

- If a source’s comment is evaluative rather than descriptive, attempt to clarify the statement or have the source be more specific. Remember that investigators’ reports (in contrast to GAL reports) are factual and not evaluative in nature. Opinion, whether that of the investigator or a source, ultimately will be stricken or limited in its admissibility. Nevertheless, an investigator may wish to include statements of opinion knowing that it may ultimately be stricken. If you do include opinion from a source, be sure that the opinion is contained in a sentence or paragraph separate from the factual material derived from that source so that it can be redacted easily when necessary.

#### **4. Sources should be easily identifiable.**

- The report should clearly show the following for each factual allegation: who the informant is or the type of record reviewed, what the source’s position is, what his/her/its relationship is to the family, when the information was obtained or person interviewed, how the information was obtained, and why the source is important.
- Example of improper attribution: “hospital staff said that . . .”

#### **5. Parents should be interviewed, and a home visit performed.**

- The court investigator should contact the parent’s attorneys informing them of date and time the investigator would like to meet with parents; the investigator should give the attorney a reasonable opportunity to be present, but not let the attorney’s schedule control the investigation. An attorney may not prevent the investigator from performing his or her job, but may advise a client not to meet with the investigator or not to answer a particular question.
- Unannounced visits should be avoided unless the condition of the home is an issue.
- Prior to meeting with parents, the court investigator should obtain basic background information including why the petition was filed (*e.g.* read the affidavit, 51A and B reports, police reports, etc.).
- If English is a second language for the parent(s) and an interpreter is necessary or

advisable, file a motion as soon as possible requesting funds for an interpreter.

**6. A *Lamb*-type warning must be given before interviewing a party.**

- The court investigator must explain his/her role and the purpose of the interview to the party as well as how the information gathered is going to be used, including the fact that information the party gives to the investigator is not confidential. There cannot be any “off the record” discussion prior to interviewing a party. *See Commonwealth v. Lamb*, 1 Mass. App. Ct. 530 (1973). A similar disclosure should be made to a mature child, modified to reflect the child’s age and understanding.
- To be sure the party understands the warning, a court investigator could ask the parent to summarize the warning for the investigator.
- The court investigator should instruct the parent to be truthful, that an attorney may be present if desired, and that he/she does not have to answer a question if he/she does not want to.

**7. The report should be filed in a timely manner.**

- If a court investigator needs more time or additional hours to complete the report, he/she must file a motion requesting additional time or hours prior to the expiration of the original time allotted for completion of the investigation and filing of the report. The motion should include a statement of reasons as well as an estimate of the number of additional hours required.

**8. Other key information should be included and should be correct.**

- Efforts should be made to locate an absent parent.
- Information on minor children not on petition should be provided.
  - If the children are in the custody of the parents, the investigator should see them and interview them. If they are not, a statement should be included indicating where they are placed and with whom and why they are not in

the parents' custody.

- If the court investigator becomes aware of information which would give rise to a 51A, the court investigator immediately should file a 51A, and provide pertinent information in the court investigator's report.
- Records of previous care and protection proceedings on the same child(ren) should be reviewed and mentioned in the report.
- Extended family members should be contacted for background history and for their availability as placement resources. The court investigator may ask the parent(s) about their extended family through the use of open-ended questions. After obtaining information regarding family members, the court investigator should, as a courtesy, disclose to the parent(s) that he/she will be contacting the family members to see if he/she could be a support to the parent(s) and/or child(ren). The court investigator may ask the parent(s) whether there is any information that he/she would like to disclose regarding any family members (*e.g.* any potential biases).
- CORI data should be reported.
- It is important to note any discrepancies or omissions noticed and verify their existence.
  - Examples: Service plan is out of date; the parent may not have seen service plan; service plan is missing information; social worker may/may not have seen child or family for some time -- **verify** this with DSS social worker; note any explanations.

**9. Facts should be separated from the conclusions and other personal views of the investigator.**

- Only facts should be contained in the body of the investigation.
- The investigator's opinions should be confined to the summary and recommendations sections of the report. The investigator should remember that he/she is not a master; therefore, conclusory statements with regard to whether or not petitioner has met its burden should be avoided.
- In those instances where opinion is useful for the parties to know (*e.g.*, a psychiatrist's professional opinion, but not a neighbor's off-hand musings), include that opinion in sentences or a paragraph separate from that collateral's

factual statements so that it is easier to redact if it is later excluded from evidence.

**10. Be cognizant of any domestic violence risk to a parent or child.**

- Certain information in the report could pose risks or dangers to parents or children involved in a case, especially if there is evidence of domestic violence, (i.e., information given by one parent or by a collateral about the other parent that would anger the other parent to the point that an abusive situation might arise). Therefore, it may be important to bring that information to the attention of a parent(s)' attorney(s) in advance of filing the report.
- In some rare cases, the investigator may need to bring certain facts to the attention of the court and, in those cases, may do so by asking one of the attorneys to advance the case for hearing. (Ethical considerations prohibit the investigator from contacting the judge directly without notice to the parties and an opportunity for them to be heard).

**III. SOURCES**

The following are suggestions of possible sources from which a court investigator can obtain factual information. This list is not exhaustive. It is important to keep in mind that each case is unique and may require contacting additional sources than those commonly contacted by an investigator.

**1. Petitioner / Petitioner's Records**

- Reason for filing care and protection petition
- History and involvement with family
- Be sure to review entire case file, both that which is computer-generated and that which is in the on-going social worker's binder, 51A / 51B investigations, service plans, case reviews, voluntary agreements or contracts, and day-to-day dictation of the social worker.
- Current situation and relationship with parent(s)

**2. Biological parent(s)**

- Interview each parent separately from one another.



- Conduct home visit with parent(s), especially if parent(s) wish to have physical custody of children.
- Inquire as to parent's understanding of why care and protection filed; obtain parent's response(s) to the allegations.
- Inquire as to parent's understanding of each child's personality and needs, what parent wishes for the child and how parent would like to see child's situation be different.
- Inquire as to the background and history of each parent as an individual, as a couple, as parents.
- Inquire, finally, as to what parent wishes court to know.
- Inquire whether paternity has been established, if the child was born out of wedlock or the father's name is not listed on the child's birth certificate.

### **3. Information from children**

- Focus on age, developmental level, mental health concerns.
- Inquire as to his/her understanding of why court involved; why he/she is in placement; where they want to reside and with whom in the short and long-term.
- Review current functioning: school performance, peer relationships, interests, wishes, ambitions.

### **4. Information from other sources**

- All key collaterals should be included: hospitals, physicians, other treatment providers, parent aides, teachers, day care, CORE evaluations, home assessments, health records, police, relatives, neighbors.
- Any privilege issues regarding obtaining information from mental health or substance abuse treatment providers should be brought to the attention of the parties and the court so that special orders may be issued if warranted.
- Reasons should be given for omissions.  
Ex: "father's whereabouts unknown"
- Balance of sources should be sought: sources suggested by family, as well as sources suggested by service providers and petitioner.

## 5. Other important sources

- Criminal record (CORI) check, if applicable.
  - Check with court clerk on local court procedure regarding CORIs; In some courts the CORI may be automatically ordered upon the filing of a petition, while in others, it may not be ordered unless requested. Any CORIs received by the investigator should be attached at the end of the report.
- Birth certificates
- Probate court records; other court records
- Probation officer assigned to care and protection case
  - update about court action in case to date; judge's orders; unusual expectations of investigator

## IV. HEARSAY

### Quick synopsis:

- Hearsay, including totem-pole hearsay and hearsay from a child, is allowed in the court investigator's report both in care and protection proceedings and in proceedings dispensing with consent to adoption, guardianship, or other custody proceeding.
- For hearsay contained in an investigator's report to withstand a motion to strike at the trial of the case, the parents must be afforded an opportunity to refute the court investigator and the investigator's sources through cross examination and other means. Therefore, all out-of-court statements in the report must be attributed to a specific source by the investigator in the report.
- In cases where the statement of a child under ten (10) related to sexual abuse is contained in a court investigator's report, the requirements of G. L. c. 233, § 82 & 83 as to reliability are encompassed within the parent's right to rebut by cross-examination.
- The burden to rebut the investigator and his/her sources resides with the party seeking to refute the information contained in the report.
- Whether a hearsay statement in an investigator's report will be allowed to stand or will be stricken is for the court to decide. The obligation of the investigator is

to include any such statement, if relevant, in the report.

**Hearsay** is an out-of-court statement made by a person that is offered by another to prove the truth of the matter asserted. For example, anything that is reported to the court investigator by someone, which is then in turn incorporated by the court investigator in his/her report is hearsay. Pursuant to G. L. c. 119, § 24, a court investigator's report is admissible as evidence in a care and protection proceeding and cases involving the dispensing of parental consent to adoption, guardianship, or other custody proceeding, despite the fact that it includes hearsay. *Custody of Jennifer*, 25 Mass. App. Ct. 241, 245, 517 N.E.2d 187 (1988); *Custody of Michel*, 28 Mass. App. Ct. 260, 265, 549 N.E.2d 440 (1990); *see also Adoption of Astrid*, 45 Mass. App. Ct. 538, 546, 700 N.E.2d 275, further rev. den'd, 428 Mass. 1109, 707 N.E.2d 367 (1998)(no error in admitting court investigator's report in a proceeding to dispense with consent to adoption, including opinions, recommendations, and conclusions, where investigator testified, her sources were identified and the parents had an opportunity to rebut any adverse or erroneous material). The hearsay exception for court investigator reports exists "because of the importance of providing needed information to the court." *Custody of Tracy*, 31 Mass. App. Ct. 481, 484, 579 N.E.2d 1362 (1991). It also recognizes the difficulty and time constraints inherent in collecting adequate confidential information to be presented at the adjudicatory hearing. *Id.* Furthermore, it permits the judge to "steer as wide a course as possible in order to navigate through the cross-currents in determining the fitness of parents." *Id.* at 485.

**"Totem-pole" hearsay** is different from regular hearsay. "Totem-pole" hearsay is an out-of-court statement made by a declarant to another individual who then reports it to a third person who offers it in court for the truth of the matter asserted. One example of totem-pole hearsay would be a neighbor reporting to the court investigator that she overheard the child, who is the subject of the care and protection proceeding, tell her child that the bruises came from a beating by a parent. Another example of totem-pole hearsay would be statements made by individuals contained within reports. Under the law, however, no distinction between levels of hearsay is made as regards their inclusion in a court-investigator's report. Therefore, totem-pole hearsay will not be excluded from an investigator's report so long as there is an identified source capable of being cross-examined as to each level of the hearsay. *Michel*, 28 Mass. App. Ct. at 266 It is reasonable to assume that as a part of the investigation, an investigator will talk to neighbors, teachers, social workers, mental health workers, relatives and friends, who will

describe what they heard from third persons. *Id.* Each such third person, as well as the person interviewed, must be clearly identified as the source of the information provided.

Parents do have a due process right to effectively rebut adverse allegations concerning child-rearing capabilities, *see Adoption of Mary*, 414 Mass. 705, 710, 610 N.E.2d 898 (1993), but “the remedy is not to attempt to purge the secondary hearsay from the court investigator’s report, but to afford an opportunity to refute the investigator and the investigator’s sources through cross-examination and other means.” *Michel*, 28 Mass. App. Ct. at 266 citing *Gilmore v. Gilmore*, 369 Mass. 598, 604-05 (1976); *Custody of Two Minors*, 19 Mass. App. Ct. 552, 559 (1985); *see Tracy*, 31 Mass. App. Ct. at 484; *Adoption of Carla*, 416 Mass. 510, 514, 623 N.E.2d 1118 (1993). Thus, the parent(s) are permitted to refute hearsay and totem-pole hearsay through their opportunity to cross-examine. *See id.* Furthermore, the need for accurate information is best served by allowing the parents an opportunity to rebut the report through cross-examination, after which, the judge can consider all of the available evidence and give each piece the appropriate amount of weight. *Tracy*, 31 Mass. App. Ct. at 485-86. The investigator’s report, however, “should be limited to factual information collected from identified sources in order to permit a fair cross-examination of the investigator as to all contributions to his/her report.” *Id.* at 486.

In cases where a statement of a child under ten related to sexual abuse is contained in a court investigator’s report, the requirements of G. L. c. 233, § 82 and 83 as to the reliability of the child’s statement, are encompassed within the party’s right to rebut the report through cross-examination. *See Adoption of Quentin*, 424 Mass. 882, 890-93 (1996); *Adoption of Tina*, 45 Mass. App. Ct. 727, 732-33 (hearsay evidence admissible under section 82 in termination of parental rights cases); *see also Care and Protection of Leo*, 38 Mass. App. Ct. 237, 241, 646 N.E.2d 1086 (1995); *Care and Protection of Rebecca*, 419 Mass. 67, 83, 643 N.E.2d 26 (1994) (hearsay evidence admissible under section 83 in care and protection proceedings). “Cross-examination of the investigator provides an effective means to impeach the credibility of statements contained in the report, *see Tracy*, 31 Mass. App. Ct. at 486, and thus determine their reliability.” *Leo*, 38 Mass. App. Ct. at 242 citing *Rebecca*, 419 Mass. at 79-80.

The burden to refute the report through cross-examination of the investigator and the sources contained within the report resides with the parties, not with the Department of Social Services or the court. *See Leo*, 38 Mass. App. Ct. at 243 citing *Adoption of George*, 27 Mass. App. Ct. 265, 273 (1989). So long as the parties have seen the report, they are in a position to adequately challenge any material therein with evidence of his/her own or to call any contributor to the report. *Leo*, 38 Mass. App. Ct. at 243. If a party rejects the opportunity given by the

court, that party has effectively waived his/her right to complain of the hearsay. *Id.*

Although the inclusion of hearsay in a court investigator's report is permitted, it is recommended that with totem-pole hearsay, the investigator seek to confirm any such totem-pole information from the primary source of the information. In some cases, this might not be practical, however, and the court investigator should explain in the report the reasons for the impracticality.

## V. USE OF ADDENDA TO THE COURT INVESTIGATOR'S REPORT

The question of whether addenda to the investigator's report will be admitted into evidence or stricken is for the trial judge to decide. Typically, if reports are attached as addenda, the source of the report must be identified and the report must be properly certified in compliance with the rules of evidence or it will be stricken. *See* G. L. c. 119, § 21; G. L. c. 233, §§ 76, 79, 79A, 79J; *see also Astrid*, 45 Mass. App. Ct. at 546-47; *Adoption of Sean*, 36 Mass. App. Ct. 261, 264, 630 N.E.2d 604 (1994) (addendum to guardian ad litem's report admissible because guardian identified the source of the appendix and in many instances named the supplier of the information). In addition, the reports in the addenda will need to be authenticated prior to admission into evidence or may be stricken. *See id.* Usually, 51As, 51Bs, and service plans are independently introduced by counsel for DSS even though said reports may be attached as addenda to the court investigator's report. Nevertheless, even if a report has to be excluded when the investigator's report is admitted, the inclusion of such a report as an addendum can be a service to the parties in their evaluation of the case. To ensure that important information from an addendum is read and considered by the trial judge, any such important information should be included in the body of the report and properly attributed.

## VI. ORGANIZATION OF REPORT

### 1. Overall

- make use of bold type and underlining and or headings to identify sources
- pinpoint time-frames if at all possible
  - avoid use of "on 1 or 2 occasions"
  - avoid use of "in the past"
- identify sources of statements
- define all medical/psychiatric terms using medical dictionary or DSM IV

· give detailed information about:

- (A) 51A information (subject, alleged perpetrator, when filed, allegations, outcome of investigation, recommendations)
- (B) Service plans and compliance
- (C) Court /criminal records

Note: some judges prefer to have these reports attached as addenda to the court investigator's report and not summarized, even though said reports might be stricken. *See use of addenda supra* at 11. Unfortunately, the judge who appoints the investigator is not always the trial judge ruling on the admissibility of documents. Therefore, it is wise to err on the side of inclusion.

## **2. Suggested outline**

The following is a suggested outline for a court investigator's report.<sup>1</sup> It is the intention of this outline to help the investigator make the information easily accessible to the reader. The purpose of the outline is to provide the court investigator with the type and quantity of information to be contained in the report. The data should be presented in the order that makes the most sense logically in that particular case. Sample reports may be requested from the court that ordered the investigation. In the report, the investigator should refrain from using evaluative terms. Rather, the investigator should state the facts with respect to each category. The outline is not exhaustive as the facts of each case are unique and may require the review of additional factors or sections. Further, this outline may identify issues that are not of concern in the particular case being investigated. If an issue is not germane to the particular case, it should not be included in the report.

### **OUTLINE**

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<sup>1</sup> Many factors used in this outline are taken from, Allen, Virginia, A., INFORMATIONAL GUIDELINES FOR COURT INVESTIGATORS IN G. L. CH. 119, S. 24, CARE AND PROTECTION PROCEEDINGS, printed in MCLE, COURT INVESTIGATORS IN CARE AND PROTECTION, 94 - 10.12 (1994).

**I. IDENTIFY PARTIES AND STATE BASIS OF PETITION**

**II. PARENTS**

- A. Names – including step-parents, any putative fathers
- B. Addresses – present or last known if applicable
- C. Date of Birth & Age
- D. Marital status including history or present and past marriages; dates of divorce
  - Relationship with spouse/partner
- E. Last grade of education
- F. Employment history
- G. Source of any income or financial assistance
- H. Religion, if known
- I. Cultural considerations
- J. Physical status-ailments; addictions; substance abuse
- K. Psychological status-mental health
- L. Impulse control & response to stress
- M. Relationship with extended family
  - Relationships with supports
- N. Relationship with individual children
- O. Prior history, if any, with any state or private social service agency, court, police including, but not limited to:
  - chronological history of G. L. c. 119, § 51As – when, where, by whom, allegation, whether substantiated/unsubstantiated, recommendation
  - chronological history of any G. L. c. 209A actions, temporary restraining orders, violations of 209A orders
  - court proceedings
  - criminal record
- P. Parent'(s) view of C&P allegation(s)
- Q. Parent'(s) view of child(ren)'s character and needs

**III. CHILDREN (for each child on petition)**

**A. Background**

- 1. Name
- 2. Age / date of birth
- 3. Mother
- 4. Father (note any paternity issues)
- 5. Address

6. School and grade
  - (a) attendance
  - (b) appearance
  - (c) behavior
  - (d) grades
  - (e) relationships in school
  - (f) CORE evaluation
  - (g) IQ
  - (h) other
7. Special needs
8. Medical needs
9. Psychological needs
10. Other

B. Foster care

1. Duration
2. Status in foster care
  - (a) behavior
  - (b) attitude
  - (c) verbal and behavioral reaction before and after visitation
  - (d) relationship with foster parent(s)
  - (e) relationship with & behavior toward any other children in foster placement, if applicable
  - (f) level of communication with biological parent
  - (g) other
3. Prognosis, likelihood and time frame projected for child's safe return home

C. Nature of parental abuse / neglect

1. Sexual abuse
2. Physical abuse
3. Emotional abuse
4. Physical neglect
5. Emotional neglect
6. Lack of supervision; placing child in high risk situations
7. Other

D. Effect of abusive or neglectful treatment on child. Conditions that might be caused or exacerbated:

1. Educational status, including any special needs
2. Social / Emotional status



3. Physical health

E. Relationship with parent(s) or extended family members

1. Visitation with parents
2. Visitation with extended family members

F. Relationship with siblings

1. Nature of relationship
  - (a) time spent living together
  - (b) if not in same placement, type and extent of visitation if applicable; note any court action regarding sibling visitation
  - (c) siblings expressed desire to live together as a family
  - (d) child's preference for placement
  - (e) other

G. Child(ren)'s view of the situation (if age appropriate)

1. Child(ren)'s view of family, self and predicament
2. Child(ren)'s feelings about:
  - (a) placement
  - (b) parents
  - (c) extended family, if appropriate
  - (d) reunification
3. Other

IV. CHILDREN NOT INCLUDED IN PETITION

A. Background

1. Name
2. Age / Date of Birth
3. Mother
4. Father
5. Address
6. School and grade
  - (a) attendance
  - (b) appearance
  - (c) behavior
  - (d) grades
  - (e) relationships in school
  - (f) CORE evaluation
  - (g) IQ
  - (h) other

7. Special needs
8. Medical needs
9. Psychological needs
10. With whom are child(ren) living. If not with parent, why not.

B. Why child(ren) not on petition.

V. EXTENDED FAMILY

- A. Maternal / paternal grandparent(s), if living
  - (1) names
  - (2) addresses
  - (3) understanding of and attitude towards present situations
  - (4) interest in helping family, including financially
  - (5) willingness and capacity to take children
- B. Maternal / paternal aunts and uncles
  - (1) review factors (1) - (5) above for grandparents
- C. Adult siblings
  - (1) review factors (1) - (5) above for grandparents

VI. PARENTING

- A. Children's nutrition
- B. Children's clothing
- B. Family Housing (describe setting)
- D. Education of children
  1. Attendance, followup; parental interest –describe
  2. Parent(s)' explanation for any school related problems
  3. Describe level of parental understanding and support for child's educational needs
- E. Medical / Physical/ Psychological Welfare of Children
  1. Medical care
  2. Emotional status
  3. Physical care
- F. Cultural considerations

G. Religious considerations, if applicable

VII. MATERNAL / PATERNAL INVOLVEMENT WITH SERVICES AND AVAILABILITY OF SUPPORTS

A. Relationship with the DSS or other social service providers

1. Generally

- a. Cooperation
- b. Position regarding service plan
- c. Motivation to make use of services
- d. Capacity to utilize support services
- e. Previous experiences with other children
- f. Parent(s)' willingness and ability to modify behavior that puts child(ren) in danger

2. Visitation & Communication with child

- a. Attendance, if problems, describe in detail
- b. Interaction with child(ren)
- c. Appropriate interaction – describe
  - (1) affection / attention
  - (2) ability to set appropriate limits
  - (3) ability to communicate with children
  - (4) ability to appropriately stimulate child(ren)
  - (5) other
- d. If investigator observed visit between parent:
  - (1) when, where, arranged by whom
  - (2) parent and child present
  - (3) describe visit especially parent / child interactions in detail

VIII. MATERNAL / PATERNAL COMPLIANCE WITH RECOMMENDED TREATMENT PROGRAMS

A. Psychotherapy

B. Drug / Alcohol Evaluation / Counseling

C. Domestic Violence Counseling

D. Homemaker / Home Health Aide (if applicable)

E. Parenting Programs

## VII. SUMMARY SECTION

After the body of the report, the investigator may include a section which summarizes key facts. No new facts should be added to the summary section. Rather, the facts should speak for themselves. This section allows the court investigator to state the implications of all the data collected with regard to the petitioner's allegations and the possible case disposition. It is an opportunity to underline strengths and weaknesses of the family which may not be readily apparent. Furthermore, this section can speak to the willingness and ability of a parent to work on the issues that originally brought them to the attention of the court. The summary section should not, however, be an opportunity for the court investigator to discuss whether the investigator liked or disliked the family or agreed / disagreed with the family lifestyle.

## VIII. COURT INVESTIGATOR'S OATH

Court investigators should conclude their reports with a notarized oath swearing that their observations are true, that statements made by others contained within the report are accurately quoted, and that the opinions expressed by the court investigator within the report are rendered through the exercise of their best professional judgment. (See attached sample)

## **IX. RECOMMENDATIONS**

Although the court investigator's central function is to bring facts to the attention of the court, in some cases, the recommendations of the court investigator will also be permitted. *See Adoption of Astrid*, 45 Mass. App. Ct. 538, 546 (1998) (no error in admitting an investigator's report, including opinions, recommendations, and conclusions, where the investigator testified, her sources were identified, and the parents had the opportunity to rebut any adverse or erroneous material).

The recommendation section should be consistent with factual data presented in the body of the report. The ultimate legal question of fitness/unfitness and/or best interests is for the court to decide. Therefore, the court investigator should refrain from recommending that the child be adjudicated "in need of care and protection," or that parents be found "unfit." The

recommendation section, however, does serve a useful purpose to the court because it may contain suggestions of services that judges, attorneys and even DSS may be unaware of, which the investigator may have had experience with because of his/her work in another case. In addition, the court investigator, in a recommendation section can make the court aware of alternatives which DSS, because of policy or regulations, would not present.

It is important for the court investigator to have considered what his/her recommendations are because the investigator may be called upon to testify as an expert witness. *See G. L. c. 119, § 21.*

## **X. UPDATES**

The investigator may be called upon to “update” his/her investigation and file an addendum to the original report. This may occur when circumstances change, when a missing parent is located, or when the parent has petitioned for his/her review and redetermination right pursuant to G. L. c. 119, § 26. When an update is requested, the investigator should focus on all circumstances and facts since the date of the previous report. In some cases, the investigator may be ordered to provide an update with a focus around a specific person and/or issue.

## **XI. SOURCES**

Carr, Thomas, MA, HOW TO’S OF INVESTIGATIONS, MCLE, COURT INVESTIGATORS IN CARE AND PROTECTION CASES (93 - 10.11) 283 - 299 (1994)

MCLE, COURT INVESTIGATIONS IN CARE AND PROTECTION CASES (93 - 10.11) (1994)

MCLE, COURT INVESTIGATIONS IN CARE AND PROTECTION CASES (95 - 10.12) (1995)

MCLE, BEING PREPARED TO TESTIFY (96 - 10.06) (1996)

Segaloff, Ruth, T., LICSW, THE INVESTIGATOR’S REPORT: GUIDELINES FOR MEASURING QUALITY, MCLE, BEING PREPARED TO TESTIFY (96-10.06) (1996)

Segaloff, Ruth, T., LICSW, INTERPRETATION OF DATA (1996)

## **CASES:**

*Adoption of Astrid*, 45 Mass. App. Ct. 538, 700 N.E.2d 275, further rev. den’d, 428 Mass. 1109, 707 N.E.2d 367 (1998)

*Adoption of Carla*, 416 Mass. 510, 623 N.E.2d 118 (1993)

*Adoption of George*, 27 Mass. App. Ct. 265 (1989)  
*Adoption of Mary*, 414 Mass. 705, 610 N.E.2d 898 (1993)  
*Adoption of Sean*, 36 Mass. App. Ct. 261, 630 N.E.2d 604 (1994)  
*Care and Protection of Leo*, 38 Mass. App. Ct. 237, 646 N.E.2d 1086 (1995)  
*Care and Protection of Rebecca*, 419 Mass. 67, 643 N.E.2d 26 (1994)  
*Commonwealth v. Lamb*, 1 Mass. App. Ct. 530 (1973)  
*Custody of Jennifer*, 25 Mass. App. Ct. 241, 517 N.E.2d 187 (1988)  
*Custody of Michel*, 28 Mass. App. Ct. 260, 549 N.E.2d 440 (1990)  
*Custody of Tracy*, 31 Mass. App. Ct. 481, 579 N.E.2d 1362 (1991)  
*Custody of Two Minors*, 19 Mass. App. Ct. 552, 476 N.E.2d 165 (1985)  
*Duro v. Duro*, 392 Mass. 574, 467 N.E.2d 165 (1984)  
*Petition of the Dept. of Public Welfare to Dispense with Consent to Adoption*, 383 Mass. 573, 421 N.E.2d 28 (1981)

**COURT INVESTIGATOR'S OATH**

**Commonwealth of Massachusetts**

, ss

Date: \_\_\_\_\_

Then personally appeared the above-named \_\_\_\_\_ and made oath that within the attached Court Investigator's Report dated \_\_\_\_\_ the statements are accurately quoted, the observations are accurately presented, and the facts written are true to the best of his/her knowledge, before me

Notary

My Commission Expires: